

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

v.

TYSON FOODS, INC., *et al.*,

Defendants.

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Case No. 4:05-CV-329-GKF-PJC

RESPONSE TO DEFENDANTS CARGILL INC.'S AND CARGILL
TURKEY PRODUCTION LLC'S REQUESTS FOR ADMISSION,
INTERROGATORIES, AND REQUEST FOR PRODUCTION
OF DOCUMENTS TO PLAINTIFFS [SIC] (FEBRUARY 17, 2009)

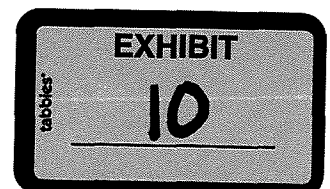
GENERAL OBJECTION

The State objects to these Requests for Admissions because they exceed the number allowed the Cargill Defendants under LCvR 36.1.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Poultry waste is an effective fertilizer when properly used.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: The number of these requests exceeds the limit authorized by LCvR 36.1. Subject to the meaning ascribed to the term "effective fertilizer" by General Edmondson, and accepting that "properly used" means used where there is an agronomic need for both nitrogen and phosphorus and not in excess of the agronomic need for nitrogen or phosphorus, and used consistently with all state and federal statutes and common law, including but not limited to the prohibition on discharge and runoff



from the application site, this request is admitted.¹ However, this statement is denied to the extent that, as a matter of law, poultry waste is not a fertilizer under Oklahoma law. *See* 2 Okla. Stat. § 8-77.3(11). Based on the expert testimony of Dr. Gordon Johnson, poultry waste is not a good fertilizer. *See* Exhibit 1 hereto, at No. 13.

REQUEST FOR ADMISSION NO. 2: Every instance of application of poultry waste to lands within the IRW results in a release or threatened release of hazardous substances from a facility.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Subject to and without waiving the objection that the number of these requests exceeds the limit authorized by the LCvR 36.1, this request is admitted.

REQUEST FOR ADMISSION NO. 3: Not every instance of application of poultry waste to lands within the IRW results in a release or threatened release of hazardous substances from a facility.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Subject to and without waiving the objection that the number of these requests exceeds the limit authorized by LCvR 36.1, this request is denied.

REQUEST FOR ADMISSION NO. 4: The State of Oklahoma does not know whether every instance of application of poultry waste to lands within the IRW results in a release or threatened release of hazardous substances from a facility.

¹ The State notes that Drew Edmondson is not a Plaintiff in this action. The State of Oklahoma is the Plaintiff. Attorney General Edmondson is the State's chief law officer and lead counsel for the State in this action.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Subject to and without waiving the objection that the number of these requests exceeds the limit authorized by LCvR 36.1, this request is denied.

REQUEST FOR ADMISSION NO. 5: Every compound that contains phosphorus is a hazardous substance under CERCLA.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, whether every compound that contains phosphorus is a hazardous substance under CERCLA is a question of law, and thus an improper subject for a request for admission. Further, *all* phosphorus-containing compounds are not the subject of the State's action, and thus this request is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, the State admits that phosphorus-containing compounds in poultry waste are a hazardous substance under CERCLA.

REQUEST FOR ADMISSION NO. 6: Not every compound that contains phosphorus is a hazardous substance under CERCLA.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, whether every compound that contains phosphorus is a hazardous substance under CERCLA is a question of law, and thus an improper subject for a request for admission. Further, *all* phosphorus-containing compounds are not the subject of the State's action, and thus this request is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, the State admits that phosphorus-containing compounds in poultry waste are a hazardous substance under CERCLA.

REQUEST FOR ADMISSION NO. 7: The Oklahoma Department of Agriculture, Food & Forestry intends the Animal Waste Management Plans it issues to Oklahoma poultry growers to meet the regulatory requirements under the Oklahoma Registered Poultry Feeding Operations Act and the rules and regulations developed under that Act.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is based upon an erroneous factual premise, is hence non-sensical, and therefore the State cannot admit or deny it. The Oklahoma Department of Agriculture, Food & Forestry does not "issue" Animal Waste Management Plans to Oklahoma poultry growers. *See* Response to Interrogatory No. 1.

REQUEST FOR ADMISSION NO. 8: The Oklahoma Department of Agriculture, Food & Forestry does not intend the Animal Waste Management Plans it issues to Oklahoma poultry growers to meet the regulatory requirements under the Oklahoma Registered Poultry Feeding Operations Act and the rules and regulations developed under that Act.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is based upon an erroneous factual premise, is hence non-sensical, and therefore the State cannot admit or deny it. The Oklahoma Department of Agriculture, Food & Forestry does not "issue" Animal Waste Management Plans to Oklahoma poultry growers. *See* Response to Interrogatory No. 1.

REQUEST FOR ADMISSION NO. 9: The Oklahoma Department of Agriculture, Food & Forestry develops the Animal Waste Management Plans it issues to Oklahoma poultry growers

based on current scientific standards for animal waste management and any applicable federal, state, or local regulations or policies.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is based upon an erroneous factual premise, is hence non-sensical, and therefore the State cannot admit or deny it. The Oklahoma Department of Agriculture, Food & Forestry does not "issue" Animal Waste Management Plans to Oklahoma poultry growers. Nor does it "develop" them. *See* Response to Interrogatory No. 1. Furthermore, in any event, this request for admission is vague and ambiguous. Specifically, the State objects to phrase "current scientific standards for animal waste management" and "any applicable federal, state, or local regulations or policies" as too vague and ambiguous because the State cannot determine to what standards, regulations, or policies the request is referring.

REQUEST FOR ADMISSION NO. 10: The Oklahoma Department of Agriculture, Food & Forestry develops the Animal Waste Management Plans it issues to Oklahoma poultry growers on a basis other than current scientific standards for animal waste management and any applicable federal, state or local regulations or policies.

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is based upon an erroneous factual premise, is hence non-sensical, and therefore the State cannot admit or deny it. The Oklahoma Department of Agriculture, Food & Forestry does not "issue" Animal Waste Management Plans to Oklahoma poultry growers. Nor does it "develop" them. *See* Response to Interrogatory No. 1. Furthermore, in any event, this request for admission is vague and ambiguous. Specifically, the State objects to phrase "current scientific standards for

animal waste management" and "any applicable federal, state, or local regulations or policies" as too vague and ambiguous because the State cannot determine to what standards, regulations, or policies the request is referring.

REQUEST FOR ADMISSION NO. 11: The levels of land application of poultry litter set forth for specific fields in Oklahoma Animal Waste Management Plans are reasonable levels.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is vague and ambiguous and incapable of being responded to because it does not identify "levels of land application," any "specific field," or any specific AWMP, and because it does not define the term "reasonable" or specify "reasonable for what purpose." Therefore, this request is incapable of being either admitted or denied.

REQUEST FOR ADMISSION NO. 12: The levels of land application of poultry litter set forth for specific fields in Oklahoma Animal Waste Management Plans are not reasonable levels.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is vague and ambiguous and incapable of being responded to because it does not identify "levels of land application," any "specific field," or any specific AWMP, and because it does not define the term "reasonable" or specify "reasonable for what purpose." Therefore, this request is incapable of being either admitted or denied.

REQUEST FOR ADMISSION NO. 13: The levels of land application of poultry litter set forth for specific fields in Oklahoma Animal Waste Management Plans are sometimes reasonable levels and sometimes not reasonable levels.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is vague and ambiguous and incapable of being responded to because it not identify "levels of land application," any "specific field," or any specific AWMP, and because it does not define the term "reasonable" or specify "reasonable for what purpose." Therefore, this request is incapable of being either admitted or denied.

REQUEST FOR ADMISSION NO. 14: The State of Oklahoma has no evidence based on the specific chemical makeup of poultry waste that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house.

RESPONSE TO REQUEST FOR ADMISSION NO. 14: Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. In addition this request is vague and ambiguous. Subject to and without waiving its objections the State admits that it has no evidence based solely on the specific chemical makeup of poultry waste that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house. However, as the Cargill Defendants are well aware, the State need not prove that the poultry waste polluting the waters of the IRW comes from any particular poultry house. In fact, the State does have evidence based on the specific chemical makeup of poultry waste, as well as other evidence, that clearly establishes that waste generated by the poultry integrator Defendants' birds, including the Cargill Defendants' birds, is present in the waters of the IRW.

REQUEST FOR ADMISSION NO. 15: The State of Oklahoma has no evidence based on DNA analysis that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Objection. The number of

these requests exceeds the limit authorized by LCvR 36.1. In addition, this request is vague and ambiguous. Subject to and without waiving its objection, the State admits that it has no evidence solely based on DNA analysis that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house. However, as the Cargill Defendants are well aware, the State need not prove that the poultry waste polluting the waters of the IRW comes from any particular poultry house. In fact, the State does have evidence based on DNA analysis, as well as other evidence, that clearly establishes that poultry waste generated by the poultry integrator Defendants' birds, including the Cargill Defendants' birds, is present in the waters of the IRW.

REQUEST FOR ADMISSION NO. 16: The State of Oklahoma has no evidence based on biological markers that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Objection. The number of

these requests exceeds the limit authorized by LCvR 36.1. In addition, this request is vague and ambiguous. Subject to and without waiving its objection, the State admits that it has no evidence solely based on biological markers that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house. However, as the Cargill Defendants are well aware, the State need not prove that the poultry waste polluting the waters of the IRW comes from any particular poultry house. In fact, the State does have evidence based on biological markers, as well as other evidence, that clearly establishes that poultry waste generated by the poultry integrator Defendants' birds, including the Cargill Defendants' birds, is present in the waters of the IRW.

INTERROGATORIES

INTERROGATORY NO. 1: As to any Request for Admission above to which you did not response with an unqualified admission, please state all facts known to you on which you base your failure to admit and identify all witnesses and documents that you claim support those facts.

RESPONSE TO INTERROGATORY NO. 1: The State objects to this Interrogatory as overly broad and unduly burdensome because it requires statement of “all” facts, identification of “all” witnesses and “all” documents to support the facts.

The basis for the partial denial of request to admit no. 1 appears in the response to that request.

Requests to admit nos. 3 and 4 were denied on the ground that every land application of poultry waste to lands within the IRW results in a release or threatened release of hazardous substances from a facility. Facts confirming this fact have been repeatedly and exhaustively set out in discovery disclosures to Defendants, including but not limited to interrogatory responses, document productions, expert witness reports, and depositions and reiteration of these facts yet again is unduly burdensome and harassing. Yet further, facts supporting this fact were set forth in the State's response to Defendants' motion for partial summary judgment on CERCLA, Dkt. No. 1914, and errata thereto, Dkt. No. 1919, which is incorporated by reference. A copy of the factual statement (only) of that brief is attached hereto as Exhibit 1.

Requests to admit nos. 5 and 6 were objected to, and the basis for the objections is stated in the responses themselves.

Regarding requests to admit nos. 7 through 10, the Cargill Defendants should be well aware from a review of the deposition of the State's 30(b)(6) designee Teena Gunter, Esq., as

well as documents produced from the files of ODAFF, that ODAFF does not “issue” AWMPs. ODAFF hires contract plan writers as part of a grant from the USDA. AWMPs are not ODAFF products, but are written for the Natural Resources Conservation Service (NRCS) and the producer. AWMPs are written to specifications of the NRCS, using specific software required by the NRCS, not ODAFF. ODAFF is a technical service provider, and the contractors who write plans are like a field office of the USDA NRCS. Gunter Tr. 81-82. ODAFF has a cooperative agreement with the NRCS whereby the NRCS trains ODAFF contractors to write AWMPs on behalf of NRCS. Gunter Tr. 243:21-25. Six people have taken the training and been certified by NRCS. Gunter Tr. 244:1-4. The plan writers are not full time employees of ODAFF, but are all contractors. Gunter Tr. 244:11-13. The plan writers send two copies of the plan to the NRCS, which provides them to the grower, who in turn sends one copy to ODAFF for its files. Gunter Tr. 244:14-19. Dan Parrish and Teena Gunter would support these facts. Documents supporting these facts would include AWMPs previously produced in the grower files of ODAFF.

Requests to admit nos. 11 through 13 were objected to, and the basis for the objections is stated in the responses themselves.

INTERROGATORY NO. 2: Please identify with specificity the location and boundaries of each “facility” or portion of a “facility” (including but not limited to growers buildings, structures, installations, equipment, and land) for which you assert any Cargill entity is or was an “owner,” “operator,” or “arranger” and from which you assert a “release” or “threatened release” resulted.

RESPONSE TO INTERROGATORY NO. 2: The State responds to this Interrogatory pursuant to the definition and limitations set forth by the Cargill Defendants in Interrogatory No.

2. The State objects to this Interrogatory as overly broad and unduly burdensome because it requires with specificity the location (at least implicitly) of “all” facilities.

With respect to “facilities” in Oklahoma from which a “release” or “threatened release” resulted locations can, pursuant to Fed. R. Civ. P. 33(d) be determined from the grower and applicator files of ODAFF for the Cargill Defendants' poultry growing operations / poultry growing operations under contract with them, from land applicators contracting with the Cargill Defendants' poultry growing operations / poultry growing operations, and other persons receiving the waste. These documents have already been produced to the Cargill Defendants. Further, identification of “facilities” in Oklahoma and Arkansas from which a “release” or “threatened release” resulted can be derived from the Cargill Defendants' own files regarding their poultry growing operations / poultry growing operations under contract with them. Yet further, identification of “facilities” in Oklahoma and Arkansas from which a “release” or “threatened release” resulted can be found in the reports of the State's investigators (which have already been produced), as well as the State's productions of its scientific documents. Yet further, identification of “facilities” in Oklahoma and Arkansas from which a “release” or “threatened release” resulted can be derived from the State's expert reports (e.g., without limitation, Dr. Engel's expert report). Additional information responsive to this interrogatory can be derived from the State's response to Defendants' motion for partial summary judgment on CERCLA, Dkt. No. 1914, and errata thereto, Dkt. No. 1919, which is incorporated herein by reference. *See* Exhibit 1 hereto for the factual statement from that brief. *See also*, the State's Supplemental Responses to Defendant Cargill, Inc.'s Interrogatories dated October 19, 2007, with exhibits thereto, attached as Exhibit 2 to this response.

INTERROGATORY NO. 3: Please identify by date and location each “instance” known to Plaintiffs in which any Cargill entity, or any Oklahoma poultry grower who has contracted with any Cargill entity, has applied poultry litter in violation of any Oklahoma statute or regulation or in a manner inconsistent with the terms of any Animal Waste Management Plan issued by the Oklahoma Department of Agriculture.

RESPONSE TO INTERROGATORY NO. 3: The State objects to this Interrogatory as overly broad and unduly burdensome because it seeks identification of “each” instance in which the Cargill Defendants or their contract growers violated Oklahoma statutory / regulatory law. In addition, ODAFF does not issue AWMPs and, in any event, compliance with an AWMP does not necessarily equate to compliance with Oklahoma statutory / regulatory law (or for that matter, federal statutory law or state or federal common law). By way of example and without limitation, 27A Okla. Stat. 2-6-105(A) provides that “[i]t shall be unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, land or waters of the state.” The evidence that the land application in the IRW of poultry waste from the Cargill Defendants' birds (as well as the other Defendants' birds) is or is likely to be causing pollution of the waters of the State is overwhelming. *See, e.g.*, Expert Reports of Drs. Fisher, Olsen, Engel, Harwood, and Teaf. Additionally, governmental reports are in full accord with this fact. *See, e.g.*, 2008 303(d) list. *See also*, Response to Interrogatory No. 2 and State’s Supplemental Responses to Defendant Cargill, Inc.’s Interrogatories dated October 19, 2007, with exhibits thereto, attached as Exhibit 2 to this response.

INTERROGATORY NO. 4: Please identify by date, location, and actor any claimed unlawful act or omission by any Cargill entity, or any poultry grower who has contracted with any Cargill entity, in connection with the land application of poultry litter.

RESPONSE TO INTERROGATORY NO. 4: The State objects to this interrogatory as overly broad and unduly burdensome because it is not limited, by its terms, to the IRW and appears to be implicitly seeking “all” or every information about unlawful acts. Moreover, it is cumulative of earlier discovery, and thus unduly burdensome. Subject to and without waiving these objections, and by way of example and without limitation, see responses and objections to Interrogatories Nos. 2 and 3. Additionally, see State’s Supplemental Responses to Defendant Cargill, Inc.’s Interrogatories dated October 19, 2007, with exhibits thereto, attached as Exhibit 2 to this response.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION OF DOCUMENT NO. 1: All documents in your possession, custody, or control concerning or relating in any way to any investigation by any government body into any professional nonfeasance or malfeasance by any director, shareholder, or employee of BMP’s, Inc. and Eucha-Spavinaw BMP’s, Inc., including but not limited to any investigations by the Oklahoma Conservation Commission or the federal Environmental Protection Agency.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 1: The State objects to this request because it is not reasonably calculated to lead to admissible evidence in this case, because the term “professional nonfeasance or malfeasance” is vague and ambiguous, and because it does not identify any director, shareholder, or employee of BMP’s Inc. and

Eucha-Spavinaw BMP's, Inc. to which it applies. Additionally, the request for "all" documents is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 2: All documents in your possession, custody, or control relating to any Oklahoma State Board of Agriculture designation of any Cargill entity, or any poultry grower who has contracted with any Cargill entity, as a "concentrated animal feeding operation" pursuant to 2 Okla. Stat. § 10-9.9(A).

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2: To the knowledge of the State, no responsive documents exist. Should it determine that responsive documents exist, it will supplement its response to this request.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 3: All documents in your possession, custody, or control relating to any Oklahoma State Board of Agriculture determination that any Cargill entity, or any poultry grower who has contracted with any Cargill entity, "is a significant contributor of pollution to waters of the state" pursuant to 2 Okla. Stat. §20-44 (2008) (formerly 2 Okla. Stat. § 20-6).

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 3: To the best of the knowledge of the State, no responsive documents exist. Should it determine that responsive documents exist, it will supplement its response to this request.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 4: All documents in your possession, custody, or control relating to any violation or alleged violation of any section or subsection of the federal hazardous waste subtitle, 42 U.S.C. § 6921 et seq., or of any regulation promulgated thereunder, by any Cargill entity, or any poultry grower who has contracted with any Cargill entity.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 4: The State objects to this request as overly broad and unduly burdensome and not calculated to lead to admissible evidence, especially since it is not limited to the allegations of the present action, or to violations in the IRW, and requests “all” documents. Moreover, by referring to a large body of statutory and regulatory law, this Request is vague and ambiguous, rendering it impossible for the State to determine what is asked for.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 5: All documents in your possession, custody, or control reflecting or relating in any way to the issuance of any Animal Waste Management Plan to any poultry grower in the IRW from the commencement of this lawsuit to the present, including any list or compilation of such permits or the farmers to whom they were issued.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 5: The State objects because the request broadly seeks “all” documents “reflecting or relating” in any way to the issuance of any AWMP, which is overly broad, unduly burdensome and harassing. Moreover, to the extent this request implies that the State issues AWMPs, the State objects because it does not issue AWMPs or “permits.” *See* Response to Interrogatory No. 1. Additionally, this request is ambiguous because an AWMP is not a “permit,” and the State cannot determine what list or compilation of “such permits” is requested. Subject to and without waiving those objections, in the course of this litigation, the State has produced pertaining to AWMPs in the grower and applicator files of the ODAFF. Listing the documents already produced would be unduly burdensome and cumulative of other discovery already conducted and documents already produced.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 6: All documents in your possession, custody, or control reflecting or relating in any way to any claim that any land application of poultry litter occurred at farms owned or operated by growers who contract or have contracted with Cargill or CTP.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 6: The State objects because the request broadly seeks “all” documents “reflecting or relating” in any way land application of poultry waste, which is overly broad and unduly burdensome. Subject to and without waiving those objections, in the course of this litigation, the State has produced documents responsive to this request in the grower and applicator files of the ODAFF. Listing the documents already produced would be unduly burdensome and cumulative of other discovery already conducted and documents already produced. Additionally, see the expert report of Engel and the State’s Supplemental Responses to Defendant Cargill, Inc.’s Interrogatories dated October 19, 2007, with exhibits thereto, attached as Exhibit 2 to this Response.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 7: All documents in your possession, custody, or control reflecting or relating to evidence, if any, that you claim would enable the court to separate the amount of damage you claim was inflicted by Defendants as a result of the conduct alleged in Counts 4 and 5 of your Amended Complaint from the amount of damages resulting from the acts of the State of Oklahoma Plaintiffs or its tenants or acts committed with the consent or acquiescence of the State of Oklahoma.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 7: The State objects to this request because it is vague and ambiguous, and because of the flawed premise of this question and its underlying assumption of damages, or consent or acquiescence in damages

by the State, or by its tenants. The State has no such documents in its possession, nor is it aware that such documents exist.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 8: All documents in your possession, custody, or control constituting, reflecting, or relating to any communication from the State of Oklahoma to any Defendant in this action relating to any violation of any federal, state, or local statute or regulation committed or allegedly committed by any grower who has or had a contract with that Defendant to raise poultry.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 8:

The State objects to this request as overly broad and unduly burdensome because it requests “all” responsive documents. *See, e.g.*, the State’s RCRA letters to the Defendants and the Complaint filed herein. In the course of this litigation, the State has produced documents responsive to this request in the grower files of the ODAFF and files of the ODEQ. Listing the documents already produced would be unduly burdensome and cumulative of other discovery already conducted and documents already produced.

REQUEST FOR PRODUCTION OF DOCUMENT NO. 9: All documents in your possession, custody, or control constituting, reflecting, or relating to any efforts by the State of Oklahoma prior to December 19, 1997, to prohibit or regulate in any way the land application of poultry litter or any consideration of such efforts.

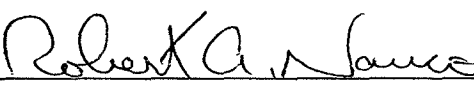
RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 9: The State objects to this request as vague and ambiguous, as well as overly broad and unduly burdensome in that it requests “all” responsive documents relating to “any” efforts to regulate “in any way” land application of poultry waste. Moreover, it is irrelevant, and not calculated to lead to

admissible evidence because neither any statute of limitations nor laches applies to the State for events before December 19, 1997.

There were numerous legal provisions before December 19, 1997 to regulate poultry waste. *See, e.g.* 27A Okla. Stat. § 2-6-105. These statutes are set forth in the Oklahoma Statutes and the session laws and are as available to Defendants as to the State. The State has also produced responsive documents at the OSRC and the office of the Oklahoma Secretary of the Environment, including but not limited to documents pertaining to Governor Keating's Animal Waste Task Force. Producing all such documents and laws would be unduly burdensome.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2009, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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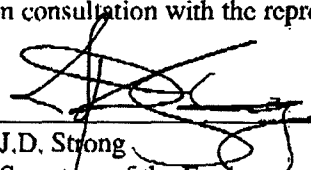


Robert A. Nance

VERIFICATION

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, J.D. Strong, being of legal age, hereby depose and state that I have read the foregoing responses to these interrogatory and that they are true and correct, to the best of my knowledge and belief, and that I furnish such responses based on consultation with the representatives of the State of Oklahoma.



J.D. Strong
Secretary of the Environment
State of Oklahoma

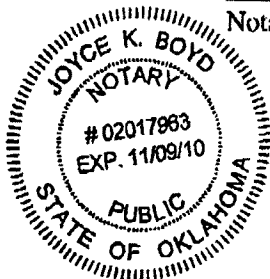
Signed and subscribed to before me on this 18th day of March, 2009.

My Commission Expires:

Nov. 9, 2010

My Commission Number:

02017963



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,

Plaintiff,

v.

TYSON FOODS, INC., et al.,

Defendants.

Case No. 05-cv-329-GKF(PJC)

**STATE OF OKLAHOMA'S RESPONSE IN OPPOSITION TO
"DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT ON
COUNTS 1 AND 2 OF THE SECOND AMENDED COMPLAINT" [DKT #1872]**



Plaintiff, the State of Oklahoma ("the State"), respectfully requests that "Defendants' Joint Motion for Summary Judgment on Counts 1 and 2 of the Second Amended Complaint" [DKT #1872] ("Motion" or "MSJ") be denied in its entirety.

I. Disputed Material Facts¹

Except where noted, the State disputes the following numbered assertions made by Defendants in their Statement of Undisputed Material Facts as follows:

1. Disputed. There are seven counties in the IRW. *See* SAC, ¶ 21 & SAC, Ex. 1.
2. Disputed. The primary land use in the IRW is pasture; developed land is a very small amount of the total land in the IRW. *See* Ex. 2 (M. Smith Report, at Table 1); Ex. 3 (Chaubey Depo., 65:10-12).
3. Disputed. The State's allegation pertains to poultry waste, not poultry litter.² *See* SAC, ¶ 57.
4. Disputed. This statement is nonsensical and the State's evidence of its injuries and response actions is not "limited to phosphorus and bacteria." The State has presented substantial evidence demonstrating that Defendants' waste disposal practices have caused injury to natural resources, the State incurred costs in responding to releases of hazardous substances from these practices, and that it is entitled to a declaratory ruling as to Defendants' liability for future response costs. *See e.g.*, §§ 17, 19-21. For example, the State has presented evidence that poultry waste includes phosphorus, nitrogen, arsenic, zinc, and copper (and compounds thereof) and that those substances have been released into the soils and waters of the IRW. *See, e.g.*, Ex.

¹ Defendants' Motion addresses the State's CERCLA claims, but their statement of "Facts" goes well beyond these claims and is improper. The State responded to Defendants' statement of "Facts" in the context of its CERCLA claims only and reserves all rights to contest any of Defendants' statements that are raised in the context of any non-CERCLA claims.

² Defendants do not define "poultry litter" in their Motion. The State interprets the term "poultry litter" to mean "poultry waste" as defined in 2 Okla. Stat. § 10-9.1(B)(21).

4 (Olsen Decl., ¶ 5); Ex. 5 (Olsen Depo., 119:19 – 120:20; 130:25 – 131:12; 344:14 – 345:10). Phosphorus, arsenic, copper, and zinc are hazardous substances and the State has incurred costs in investigating and monitoring these substances. Ex. 4 (Olsen Decl., ¶ 6); Ex. 6 (Duncan Decl.); Ex. 7 (Smithee Decl.). Todd King's report on remediation options addresses injuries caused by phosphorus, nitrogen and bacteria and is not inclusive of all the State's evidence of injuries and response costs. Ex. 8 (King Depo., 69:14-19; 214:8-18). Dr. Fisher's testimony does not support the proposition for which it is cited.

5. Disputed. The State's claims for NRD under its non-CERCLA causes of action are not limited to injuries caused by phosphorus. *See, e.g.*, SAC, Counts 4, 5, 6 & 7.

6. Disputed. EPA's hazardous substance list contained in 40 C.F.R. § 302.4 lists phosphorus, which includes any and all forms of phosphorus, including phosphorus compounds. *See infra*, Section II.B.

7. Disputed. Defendants' Exhibits 6 and 7 do not speak to all the propositions stated. Defendants' Exhibit 8 fails to include the State's objection qualifying its response to the effect that poultry waste does not contain elemental phosphorus in its pure and unmixed form. *See* Ex. 9 (RTA, Objections).

8. Admitted.

9. Disputed. Defendants' Exhibit 10, on which "Fact #9" is based, speaks in terms of "phosphorus," does not identify any specific phosphorus compounds, does not discuss how common such specific compounds may or may not be in nature, and does not state that such specific compounds are essential nutrients. *See also* Ex. 4 (Olsen Decl., ¶ 7).

10. Admitted; although poultry waste also contains substances not necessary for plant growth including arsenic, hormones and pathogens and the nutrients are not balanced such that

poultry waste is a good fertilizer. *See* ## 3 *supra* and 13 *infra*. Disposal of poultry waste in excess of fertilizer requirements is not application of “fertilizer” and causes environmental injury.

11. Irrelevant. Ancient use of manure was unlike the disposal of waste from the industrialized farming conducted by Defendants. Ex. 10 (Lawrence PI Test., 1254:14-1255:7).

12. Disputed. Defendants misstate the State’s response to Request to Admit No. 233, in which the State: (a) responded poultry waste has been used as a fertilizer or soil amendment only “in limited instances”; and (b) denied poultry waste has been land applied as a fertilizer or soil amendment predominantly in the past 50 years or more. *See* Dfs.’ Ex. 8 (RTA #233). Poultry waste is not registered as a fertilizer, *see* Ex. 10 (Johnson PI Test., 541:2-4), and is excluded from the legal definition of a fertilizer. *See* 2 Okla. Stat. § 8-77.3(11).

Further, applying poultry waste in excess of fertilizer requirements is not application of fertilizer. At a Soil Test Phosphorus (“STP”) level of 65 lbs/acre or higher, there is virtually no agronomic benefit gained from applying additional fertilizer; Oklahoma State University (“OSU”) Extension Service does not recommend additional phosphorus at that level. *See* Ex. 11 (Zhang Depo., 189:17-25); Dfts.’ Ex. 9 at 3. Defendants’ own expert admits that a field with an STP level of 65 or 100 lbs/acre does not need additional phosphorus. *See* Ex. 10 (Coale PI Test., 1798:20-24). Further, adding animal waste to fields testing above 120 lbs/acre is *disposal* of the waste without benefit to crop production but with increased *risk to water quality by runoff and erosion*. *See* Ex. 11 (Zhang Depo., 201:1-19 & Depo. Ex. 1 at p. 4). Northwest Arkansas and Eastern Oklahoma fields are saturated with phosphorus such that it is no longer needed for the vast majority (93%) of fields tested. *See, e.g.,* Ex. 12 (Johnson Rpt. at 13-16).

13. Disputed. Poultry waste is not a good fertilizer. *See, e.g.*, Ex. 10 (Johnson PI Test., 489:1-491:18, 476:1-19 & 480:7-13). *See also* # 12, *supra*.

14. Disputed. The exhibits relied upon by Defendants do not show that the State recognizes poultry waste as an effective fertilizer or actively encourages or approves of its use. Defendants' Exhibits 9 and 13 are fact sheets published by OSU relating to managing poultry waste in an environmentally sound manner and do not represent the State's position on the "effectiveness" of the waste as a fertilizer or any approval or encouragement. In any event, these very publications caution that "improper use of animal waste can result in environmental damage" and set forth the agronomic requirements for crops, instructing that poultry waste should not be disposed of in excess of crop nutrient requirements. *See* Defs.' Exs. 9 and 13.

Poultry waste is not an effective fertilizer. *See* # 13, *supra*. Oklahoma had to create a mechanism to move poultry waste from areas where concentrated poultry waste production created environmental concerns. *See* Defs.' Ex. 27; Ex. 10 (Tolbert PI Test., 91:4-24). The State regulates poultry waste through a registration law, *see* 2 Okla. Stat. § 10-9 *et seq.*, providing that "[t]here shall be no discharge of poultry waste to waters of the state," and "[p]oultry waste handling, treatment, management and removal shall[] not create an environmental or a public health hazard, [and] not result in the contamination of waters of the state" *See* 2 Okla. Stat. § 10-9.7(B)(1), (4)(a) & (4)(b); *see also, e.g.*, 27A Okla. Stat. § 2-6-105(A). Defendants have not complied with these laws. *See* ## 16; 20-21, *infra*.

15. Disputed. *See* ## 12-14, *supra*.

16. Disputed. Poultry waste is not a fertilizer under the Oklahoma Fertilizer Act. *See* 2 Okla. Stat. § 8-77.3(11). Thus, the use of poultry waste as a "fertilizer" is not authorized or regulated by Oklahoma law. Instead, applicable Oklahoma statutes and rules: (a) require poultry

operations to register with the State; and (b) establish standards for the management of poultry waste in order to protect human health and the environment. *See* # 14, *supra*; OAC 35:17-5-5(a)(7)(C) (runoff of poultry waste from the application site is prohibited); 2 Okla. Stat. § 10-9.3.

Arkansas law recognizes that improper utilization of poultry waste may result in the buildup of nutrients in the soil and cause those nutrients to leave the soil and enter waters within the state. *See* Ark. Code Ann. § 15-20-902(3). When enacting the Arkansas Soil Nutrient Application and Poultry Litter Utilization Act, the Arkansas General Assembly found that (a) land application of poultry litter may have caused “excessive soil nutrient concentration” in areas of Arkansas; (b) “[l]and application of poultry litter is a *significant source* of nutrients” in these areas; and (c) it is therefore “necessary to limit the application of nutrients and to regulate the utilization of poultry litter” in order to protect these areas from “negative[] impact.” Ark. Code Ann. 15 § 15-20-1102 (emphasis added). Arkansas recognizes the Illinois River Watershed as a “nutrient surplus area” for both phosphorus and nitrogen, *see* Ark. Code Ann. § 15-20-1104(a)(1), in which continued application of the nutrients to the soil could negatively impact soil fertility and the waters of the state. *See* Ark. Code Ann. § 15-20-1103(12).

17. Disputed. The evidence establishes that poultry waste is not being land applied in conformance with Oklahoma and Arkansas law. Defendants do not attempt to demonstrate the proper disposal of the 345,000 tons of waste produced annually, but merely offer anecdotes regarding the knowledge of various persons on limited topics. Significantly, Defendants’ counsel has admitted to over-application of poultry waste. *See* Ex. 10 (Ryan Opening, PI Tr. 46:7-18). Substantial record evidence demonstrates poultry waste is not being managed in accordance with Oklahoma law. *See* ## 12-14, *supra* & 19-21, *infra*. As demonstrated in Disputed Material Fact #16, *supra*, Oklahoma law prohibits runoff and discharge of poultry

waste to the water, creating an environmental or public health hazard, or resulting in contamination of water. Yet, despite this clear mandate, the evidence establishes that poultry waste: (a) has in fact been discharged to the waters of the State; (b) has been handled in such a way that it creates an environmental and health hazard; (c) has been handled in such a way that it has resulted in contamination of the waters of the State. *See, e.g.*, Ex. 13 (State's PI Ex. 395 at 18); Ex. 14 (Stevenson Depo., 113:2-20); Ex. 15 (Cooke Depo., 327:10 – 328:1); Ex. 16 (Teaf Depo., 36:12-18; 476:3-8). Further, neither the testimony of Shannon Phillips nor John Littlefield, relied upon by Defendants, supports the proposition that waste application is in conformance with Oklahoma law. For instance, while Shannon Phillips testified that she does not know of anyone violating animal waste management plans, she further explained that it "not [her] responsibility to monitor" such plans. Dfts.' Ex. 15. And one man's testimony (Mr. Littlefield) that he doesn't know any "bad actors" (Dfts.' Ex. 14) is hardly proof of uniform obedience to the law.

Moreover, the evidence cited by Defendants does not prove waste is applied in compliance with Arkansas law. For instance, Mr. Young's testimony cited by Defendants shows that Arkansas only inspects 5% of permitted facilities annually, but still assessed at least ten penalties. *See* Ex. 10 (Young PI Test., 1301:6-1302:18) & Defs.' Ex. 12. Mr. Young's testimony further shows that Arkansas requiring a notarized complaint has a "chilling effect" on citizen reports, but that there were two complaints of over-applied poultry waste resulting in three warning letters. *See* Ex. 10 (Young PI Test., 1302:22-1303:25) & Defs.' Ex. 8.

18. Disputed. "Common agricultural practice" is not the legal standard for the exception under CERCLA. Defendants have the burden of establishing their waste is applied as the "normal application of fertilizer." They have not met that burden. In fact, the evidence

establishes that what Defendants regard as “common” or “normal” amounts to widespread disposal of poultry waste that has resulted in pervasive pollution of the soils and waters of the IRW. *See, e.g.*, #17, *supra*; ##19-21, *infra*. *See also* Ex. 10 (Ryan Opening, PI Tr., 46:7-18).

19. Disputed. Dr. Engel did not testify that the “vast majority” of the acreage in the IRW has never had poultry waste deposited, stored, disposed of, placed, or located on it as Defendants assert. Indeed, Dr. Engel merely agreed that “poultry litter is not land applied on every parcel but is applied on particular parcels of land” *See* Ex. 17 (Engel Depo., 69:19-24) (emphasis added). In any event, the evidence shows poultry waste is deposited and disposed of in massive quantities throughout the IRW. Land use in the IRW is approximately 58% pasture. Ex. 3 (Chaubey Depo., 137:1-11). Poultry waste is land applied to pasture land in the IRW. *Id.* at 184:15-25. Indeed, land application is the “primary method” of poultry waste disposal in the IRW. Ex. 3 (Chaubey Depo., 32:8-14).

20 & 21. Disputed. It is irrelevant whether the State can identify “each location”: within the IRW to which poultry litter has been applied or its constituents have come to be located; or from which alleged releases or threatened releases of hazardous substances have occurred or where such hazardous substances have come to be located. Nonetheless, there is substantial evidence that poultry waste and hazardous substances from its constituents have come to be located throughout the IRW.

Monty Henderson, the President of Defendant George’s, has written that: (a) “[t]he problem comes when more litter is used than the crops need and phosphorus levels become too high in the soil”; and (b) “[d]uring major rain events, some of the phosphorus becomes soluble and washes off into the streams and lakes.” *See* Ex. 18 (*From the Desk of Monty Henderson*); Ex. 19 (Henderson Depo., 88:10-89:9). *See also* Ex. 20 (Mullikin Depo., 57:19-58:1). The

USDA has recently reported that: land applying poultry waste has led to an “excessive buildup of phosphorus that currently pollutes” the waters of the IRW; “[t]he number one cause of water impairments within the [IRW] is excessive nutrient loading . . .,” and “[t]his is due in large part to the practice of” land applying “poultry litter.” *See* Ex. 13 (State’s PI Ex. 395 at 18, 40)

There are approximately 1850 active poultry houses located throughout the IRW. *See* Ex. 10 (Fisher PI Test., 412:5-14); Ex. 21 (State’s PI Ex. 113); Ex. 22 (State’s PI Ex. 397). Defendants’ birds raised in these houses generate approximately 345,000 tons of poultry waste in the IRW annually. *See* Ex. 10 (Engel PI Test., 426:11-15). Nearly all of this poultry waste is land disposed near the houses where the waste is generated. *See* Ex. 10 (Engel PI Test., 446:11-18; Ex. 23 (Fisher Decl., ¶ 5); Ex. 24 (Daniel Depo., 26:23-27:23 & 50:17-51:16); Ex. 3 (Chaubey Depo., 35:2-14).

Because of excessive land application of poultry waste, high soil phosphorus levels are present throughout the IRW. *See* Ex. 12 (Johnson Rpt. at 13-16); *see also* Ex. 25 (State’s Response to CTP 8/22/06 interrogatory #9); Ex. 10 (Tolbert PI Test., 91:4-24); Ex. 26 (State’s PI Ex. 47). For instance, available data indicates that the *average* county-wide soil test phosphorus level in Benton and Washington counties is 402 lbs/acre. Ex. 12 (Johnson Rpt. at 14). And “contaminants deposited on the surface within the [IRW] are prone to runoff from soils in about half of the watershed and are prone to infiltration through soils in the remaining half of the watershed.” *See* Ex. 23 (Fisher Decl., ¶ 6); *see also* Ex. 3 (Chaubey Depo., 137:12-138:6; 141:3-19). In fact, “land application of poultry waste to the karst terrain of the [IRW] means that constituents of this waste . . . travel readily through the soils and underlying geologic media to discharge at and into ground water springs and surface streams *throughout* the [IRW].” *Id.*

Poultry waste is the “*dominant source*” of phosphorus loading in the IRW. Ex. 3 (Chaubey Depo., 74:14-75:6) (emphasis added). “Poultry production within the [IRW] is currently responsible for more than 76% of P movement into the watershed.” Ex. 27 (Engel Decl., ¶ 6); Ex. 2 (M. Smith Rpt.) (same). *See also* Ex. 28 (Illinois River Phosphorus Sampling Results and Mass Balance Computation, 6). Importantly, the IRW is a “single hydrologic unit”; all of the streams of the IRW are “connected.” *See* Ex. 3 (Chaubey Depo., 151:2-13; 152:7-11). Thus, once phosphorus is introduced into the streams of the Illinois River Drainage Area, it will eventually be transported downstream and ultimately reach Lake Tenkiller. *Id.* at 66:2-15.

The evidence shows that “phosphorus is widespread and pervasive throughout the [waters of the] entire basin with the average concentrations at most locations above 0.037 mg/L and above background concentrations.” Ex. 4 (Olsen Decl, p. 5). Dr. Jan Stevenson, who works with EPA’s nutrient criteria group and has done many nutrient investigations across the United States, testified that nutrient concentrations (including phosphorus) in the waters of the IRW are “higher . . . for a *watershed as a whole* than any other watershed that [he’s] had experience with.” Ex. 14 (Stevenson Depo., 116:10-119:7) (emphasis added). Overall, it is undeniable that high levels of phosphorus have come to be located throughout the waters of the IRW. *See, e.g.*, Ex. 29 (USGS, “Phosphorus Concentrations, Loads, and Yield in the Illinois River Basin,” 1; 22 (Table 8)); Ex. 28 (Illinois River Phosphorus Sampling Results and Mass Balance Computation at 11); Ex. 30 (Water Quality Assessment Integrated Report (2004), Appx. C); Ex. 31 (Oklahoma’s Nonpoint Source Assessment Report (2006 Updates) at 14 (Table 4)).

22. Disputed. Contrary to Defendants’ assertion otherwise, the State has identified areas or parcels of land within the IRW allegedly impacted by the deposition, storage, disposal, placement or migration of the hazardous substances. *See, e.g.*, §§ 19-21, *supra*. Nonetheless,

because phosphorus contamination is so pervasive throughout the watershed, *Id.*, it would be impracticable to separate areas or parcels of land impacted by phosphorus from areas or parcels of land not impacted as Defendants suggest.

II. Argument

A. CERCLA must be construed liberally

“Congress enacted CERCLA to facilitate the expeditious cleanup of environmental contamination caused by hazardous waste releases.” *Daigle v. Shell Oil Co.*, 972 F.2d 1527, 1533 (10th Cir. 1992). CERCLA “must be interpreted liberally so as to accomplish its remedial goals.” *Sierra Club v. Seaboard Farms, Inc.*, 387 F.3d 1167, 1172 (10th Cir. 2004).³

B. The form of phosphorus contained in Defendants’ poultry waste is a “hazardous substance” under CERCLA

40 C.F.R. § 302.4 provides that “[t]he elements and compounds and hazardous wastes appearing in Table 302.4 are designated as hazardous substances under section 102(a) of [CERCLA],” and lists “phosphorus” as a CERCLA hazardous substance. Defendants wrongly assert that this “phosphorus” entry on the list of CERCLA hazardous substances is limited to only “elemental phosphorus.” The “phosphorus” entry found in 40 C.F.R. § 302.4 plainly includes those forms of phosphorus contained in Defendants’ poultry waste.

The list of CERCLA hazardous substances found in 40 C.F.R. § 302.4 is derived by reference to CERCLA’s provisions and to that of other environmental statutes. *See* 42 U.S.C. § 9601(14). A substance need only be designated as hazardous under any one of the provisions or statutes set forth in 42 U.S.C. § 9601(14) to be a CERCLA hazardous substance. *See B.F.*

³ Defendants do not dispute that arsenic, copper and zinc (and compounds thereof) are hazardous substances and have focused their Motion on phosphorus. The State has presented undisputed evidence that it incurred response costs in responding to the release of these substances from Defendants’ poultry waste disposal. *See, e.g. #4, supra*. Accordingly, summary judgment for Defendants as to these releases has not been sought and should not be granted.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No.05-cv-329-GKF-SAJ
)	
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**STATE'S SUPPLEMENTAL RESPONSE TO DEFENDANT
CARGILL, INC.'S INTERROGATORIES**

COMES NOW, the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, (hereinafter "the State") and hereby supplements its responses to Defendant Cargill, Inc.'s Interrogatories pursuant to the Court's Order at the September 27, 2007 hearing.

GENERAL OBJECTIONS

The State fully incorporates its previous general objections to these Interrogatories as if fully stated herein.

INTERROGATORY NO. 9: Separately for each Cargill entity at issue, state with particularity the factual and legal basis for the allegation in ¶ 56 of Your Amended Complaint that any Cargill entity's "poultry waste disposal practices are not, and have not been, undertaken in conformity with federal and state laws and regulations" and identify every witness upon whom You will rely to establish each fact.



SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:

The State incorporates its previous general and specific objections and responses, and further objects to this Interrogatory to the extent it seeks information protected by the attorney client-privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B).

The actions of the Cargill Defendants and entities for which they are legally responsible violate CERCLA, the Solid Waste Disposal Act (SWDA), and the following provisions of the Oklahoma Registered Poultry Feeding Operations Act and its implementing regulations: 2 O.S. §§ 10-9.1 and 10-9.7; and OAC 35:17-5-1 and 35:17-5-5. The actions of the Cargill Defendants and entities for which they are legally responsible violate the following provision of the Oklahoma Agricultural Code: 2 O.S. § 2-18.1. Further, the actions of the Cargill Defendants and entities for which they are legally responsible violate the following provision of the Oklahoma Environmental Quality Act: 27A O.S. § 2-6-105, as well as State and Federal common law. In addition, the actions of the Cargill Defendant and entities for which they are legally responsible violate the following provisions of the OAC: 785:45-1-2, 785:45-3-2, 785:45-1-1, 785:45-5-10, 785:45-5-19, 785:45-5-12, 785:45-7-1, 785:45-7-2, 785:45-7-3, 785:45-5-9, 785:45-5-16, and 785:45-5-25.

At this time, the State has not identified direct evidence of a violation of the applicable statutes or regulations by either of the Cargill entities. The State has substantial circumstantial evidence as set forth in this response, including evidence found in grower files at ODAFF and evidence already produced to the Defendants, which demonstrates violations of applicable

statutes or regulations by the Cargill entities. All of the ODAFF grower files will be part of the State's circumstantial case.¹ Should the State develop such direct evidence, or additional circumstantial evidence, it will supplement its response to this interrogatory.

By way of example and not by limitation, the State has attached as Exhibit 2 hereto ODAFF records of Ernest Doyle which circumstantially demonstrate violations of law for which Cargill is responsible. OKDA 0003033 indicates that Cargill grower Doyle removed separate loads of waste from his operation in the amounts of 175.5 tons and 45 tons in 2001 for spreading in the Oklahoma portion of the IRW, and 246 tons, 78 tons, and 104 tons for spreading in the Oklahoma portion of the IRW in 2002. Similarly, at OKDA 0003030 Cargill grower Doyle reported that he provided separate shipments of 40 tons, 66 tons, and 66 tons of waste to be applied in the Oklahoma portion of the IRW in 2002. On the same page, this Cargill grower also reported that he provided shipments of 66 tons, 216 tons and 66 tons to the Oklahoma portion of the IRW in 2003, which is significant and inconsistent with his reporting of his 2003 activity at OKDA 0003028. At OKDA 0003028 of this record, Cargill grower Doyle indicates that in 2003 he provided three separate shipments of 66 tons, 84 tons, and 72 tons of waste to be applied in the Oklahoma portion of the IRW, and in 2004 provided an additional shipment of 91 tons of waste to be applied in the IRW. OKDA 0003037, 0003041, 0003048, 0003046 and 0003107 also record amounts of litter which was land applied. These records not only establish directly that Cargill-generated waste is being spread upon the land, but cumulatively show that this is the waste disposal practice of the Cargill Defendants.

OKDA 0003039 shows a violation of the rules for failure to perform an annual soil test and perform a litter test before the first application of each year, and failure to have a

¹ The Cargill entity growers for which files have been assigned Bates numbers and produced to the Defendants appear on Exhibit 1 attached hereto.

catastrophic death loss procedure in place. OKDA 0003056 repeated the admonition to get soil and litter tests before the first land application. OKDA 0003053 shows a reminder to get required education.

OKDA 0003045 indicates that litter was spread on Mr. Doyle's property in September, 1998, while in March 1998, the field where it was applied (field no. 3) showed an STP of 1000 to 1250 (recall that 65 is the maximum OSU finds necessary to meet 100% of crop needs). OKDA 0003072 formally notified this grower that he could not apply on field no. 3 based upon its soil test. OKDA 0003077 indicates that soil tests taken in December 1998 show the fields on Mr. Doyle's property had STPs of 884, 728, 811, and 1064 respectively and predicted that Mr. Doyle's operation would produce 560 tons of waste per year which must be applied off site, based on producing 20,500 turkeys. Mr. Doyle now produces 41,000 turkeys a year, see e.g. OKDA 0003014, so his waste production has presumably doubled. In 2000 Mr. Doyle indicated that he had land applied poultry waste for 22 years, which explains why the STP levels on his land are so high. OKDA 0003089.

The State intends to demonstrate violations of these statutes and regulations through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of the Defendant's wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from the land applied soils into

ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

- (A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the “pathway” to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;
- (B) Showing that a chemical “finger print” is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants’ waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;
- (C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;
- (D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;
- (E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. The State has produced documents addressed by the Court's January 5, 2007 Order associated with the State's sampling scheme with the February 1, 3, and 8, 2007 document productions and will continue these productions on a rolling basis. Pertinent documents include, but are not limited to, the analysis of the environmental samples included in the Plaintiffs scientific production labeled as LAL 16-A thru D and FAC 08; and the aerial photo and sampling plans found at STOK 16502-16505. Cargill is further referred to the aerial photo produced and the associated ground truthing of it locating Cargill operations as well as those of other Integrators. See OK-PL 0001-OK-PL 4332.

The expert opinions and reports that will show these violations are still being completed and will be provided to the Defendants in accordance with the Court's Scheduling Order (Dkt. #1075).

The State has not yet determined which witness or witnesses it will use to prove these facts.

The State refers Defendant to documents included in the State's February 1, 3, and 8 document production and subsequent updates produced pursuant to the Court's January 5, 2007 Order (Dkt. 1016). See index attached to first supplemental response to this interrogatory.

INTERROGATORY NO. 13: Separately for each Cargill entity at issue, state with particularity the factual and legal basis for the allegation contained in Count 4 of Your Amended Complaint that the conduct and acts of any Cargill entity constitute a nuisance under Oklahoma law (including, but not limited to, an alleged violation of 27A Okla. Stat. § 2-6-105 or 2 Okla. Stat. § 2-18.1) and identify every witness upon whom You will rely to establish each fact.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:

The State incorporates its previous general and specific objections and responses, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product protection. Further, the State objects to this Interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B).

At this time, the State has not identified direct evidence of an action constituting a nuisance by either of the Cargill entities. The State has substantial circumstantial evidence as set forth in this response, including evidence found in grower files at ODAFF and evidence already produced to the Defendants, which demonstrates actions constituting a nuisance by the Cargill entities. All of the ODAFF grower files will be part of the State's circumstantial case.² Should the State develop such direct evidence, or additional circumstantial evidence, it will supplement its response to this interrogatory.

² The Cargill entity growers for which files have been assigned Bates numbers and produced to the Defendants appear on Exhibit 1 attached hereto.

By way of example and not by limitation, the State has attached as Exhibit 2 hereto ODAFF records of Ernest Doyle which circumstantially demonstrate violations of law for which Cargill is legally responsible. OKDA 0003033 indicates that Cargill grower Doyle removed separate loads of waste from his operation in the amounts of 175.5 tons and 45 tons in 2001 for spreading in the Oklahoma portion of the IRW, and 246 tons, 78 tons, and 104 tons for spreading in the Oklahoma portion of the IRW in 2002. Similarly, at OKDA 0003030 Cargill grower Doyle reported that he provided separate shipments of 40 tons, 66 tons, and 66 tons of waste to be applied in the Oklahoma portion of the IRW in 2002. On the same page, this Cargill grower also reported that he provided shipments of 66 tons, 216 tons and 66 tons to the Oklahoma portion of the IRW in 2003, which is significant and inconsistent with his reporting of his 2003 activity at page OKDA 0003028. At OKDA 0003028 of this record, Cargill grower Doyle indicates that in 2003 he provided three separate shipments of 66 tons, 84 tons, and 72 tons of waste to be applied in the Oklahoma portion of the IRW, and in 2004 provided an additional shipment of 91 tons of waste to be applied in the IRW. OKDA 0003037, 0003041, 0003048, 0003046 and 0003107 also record amounts of litter which was land applied. These records not only establish directly that Cargill-generated waste is being spread upon the land, but cumulatively show that this is the waste disposal practice of the Cargill Defendants.

OKDA 0003039 shows a violation of the rules for failure to perform an annual soil test and perform a litter test before the first application of each year, and failure to have a catastrophic death loss procedure in place. OKDA 0003056 repeated the admonition to get soil and litter tests before the first land application. OKDA 0003053 shows a reminder to get required education.

OKDA 0003045 indicates that litter was spread on Mr. Doyle's property in September, 1998, while in March 1998, the field where it was applied (field no. 3) showed an STP of 1000 to 1250 (recall that 65 is the maximum OSU finds necessary to meet 100% of crop needs). OKDA 0003072 formally notified this grower that he could not apply on field no. 3 based upon its soil test. OKDA 0003077 indicates that soil tests taken in December 1998 show the fields on Mr. Doyle's property had STPs of 884, 728, 811, and 1064 respectively and predicted that Mr. Doyle's operation would produce 560 tons of waste per year which must be applied off site, based on producing 20,500 turkeys. Mr. Doyle now produces 41,000 turkeys a year, see e.g. OKDA 0003014, so his waste production has presumably doubled. In 2000 Mr. Doyle indicated that he had land applied poultry waste for 22 years, which explains why the STP levels on his land are so high. OKDA 0003089.

The State intends to demonstrate the conduct of the Cargill Defendants constitute a nuisance under Oklahoma law (including, but not limited to, an alleged violation of 27A Okla. Stat. § 2-6-105 or 2 Okla. Stat. § 2-18.1) through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial who will demonstrate that land application of the Defendant's wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

(A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the “pathway” to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;

(B) Showing that a chemical “finger print” is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants’ waste, the soils on which those wastes are applied, the groundwater, and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;

(C) Conducting Lake Tenkiller core analysis and comparing with (i) other lakes and (ii) poultry and waste growth and production;

(D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;

(E) Demonstrating poultry waste indicator chemicals and substances at locations that are coincident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. The State has produced documents addressed by the Court's January 5, 2007 Order associated with the State's sampling scheme and will continue these productions on a rolling basis. Pertinent documents include, but are not limited to, the analysis of the environmental samples included in the Plaintiffs scientific production labeled as LAL 16-A thru D and FAC 08; and the aerial photo and sampling plans found at STOK 16502-16505. Cargill is further referred to the aerial photo produced and the associated ground truthing of it locating Cargill operations as well as those of other Integrators. See OK-PL 0001-OK-PL 4332.

The expert opinions and reports that will show these violations are still being completed and will be provided to the Defendants in accordance with the Court's Scheduling Order (Dkt. #1075).

The State has not yet determined which witness or witnesses it will use to prove these facts.

The State refers Defendant to documents included in the State's February 1, 3, and 8, 2007 document production and subsequent updates produced pursuant to the Court's January 5, 2007 Order. See index attached to first supplemental response to this interrogatory. The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in

anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075).

Respectfully Submitted,

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(401) 457-7700

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 2007, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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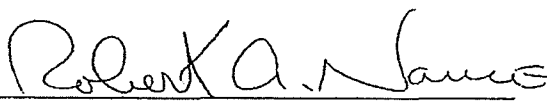
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Also on this 19th day of October, 2007, I mailed a copy of the above and foregoing pleading to the following:

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Shook Hardy & Bacon LLP
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Washington, DC 20005-2004

C. Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118


Robert A. Nance

Robert A. Nance

**Records from the
Oklahoma Department of Agriculture, Food and Forestry**

Cargill

Keri and Jerri Mitchell

Start OKDA 13475 End OKDA 13500; Start OKDA 13501 End OKDA 13505

Ernest Doyle

Start OKDA 2994 End OKDA 2999; Start OKDA 3000 End OKDA 3107

Clyde and Helen Masters

Start OKDA 10055 End OKDA 10155

Doc and Jan Rucker

Start OKDA 15917 End OKDA 15994

Robert Schwabe

Start OKDA 16237 End OKDA 16359

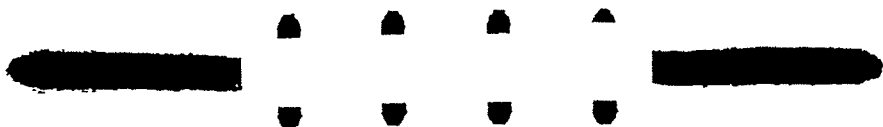
Gerald Stephens

Start OKDA 17587 End OKDA 17636

Bill Kay

Start OKDA 70754 End OKDA 70761; Start OKDA 1107 End OKDA 1132





DOYLE, ERNEST
STILWELL OK
INTEGRATOR - HONEYSUCKLE
WHITE
INSPECTOR - BERRY



OKDA0002994

CLIP 1

APPLICATION AND TRANSFER OF OWNERSHIP

OKDA0002995

POULTRY AUDIT SHEET

NAME: Ernest Doyle

 TRANSFER OF OWNERSHIP

✓ **AWMP LETTER**

✓ **CHECKLIST**

✓ **APPLICATION**

✓ **APPLICATOR INFORMATION**

✓ **DOCUMENT/NAME CHECK**

OKDA0002996

Ernest Dangle
Rt. 3 Box 1280
Silwell OK 74960
916-778-3220

OKDA0002997

OKLAHOMA DEPARTMENT OF AGRICULTURE
WATER QUALITY SERVICES
 2800 NORTH LINCOLN BOULEVARD
 OKLAHOMA CITY OK 73105-4298

DP
12-14-98

POULTRY FEEDING OPERATIONS REGISTRATION APPLICATION

A. Registration Fee \$10 (Ten Dollars) Paid \$10⁰⁰

R. 12-14-98

X Mandatory Registration _____ Renewal

_____ Re-registration of Expanding Operation (Excess of ten percent of original registered capacity)

_____ Voluntary Registration

County ADAIR
 (Facility Location)

Bret

1. **Owner** (Requires Completion)

Name C.F. ERNEST DOYLE
 Address R#2, BOX 504
 City WESTVILLE
 State OK. Zip 74965
 Phone (918) 723-5679

2. **Operator** (Must complete if different than owner)

Name ERNEST DOYLE
 Address R#3, BOX 1280
 City STILWELL
 State OK. Zip 74960
 Phone (918) 778-3220

3. **Operation** (Requires Completion)

Name ERNEST DOYLE
 Contact Person _____
 Address _____
 City _____
 State _____ Zip _____
 Phone (____) _____

4. **Integrator** (Requires Completion)

Name HONEYSUCKLE WHITE
 Contact Person TIM ALSUP
 Address BOX 225
 City SPRINGDALE
 State ARK. Zip 72764
 Phone (501) 256-4785

Driving directions to operation stated from an identifiable intersection in the nearest town from HWY 62 & 59

JCT. of WESTVILLE OK. go 8 mile WEST on HWY. 62, turn left
on blacktop road, go 1 mile turn right on blacktop road, go 1 mile
farm is on left.

OKDA0002998

RECEIVED

DEC 14 1998

WASHINGTON, D.C.
STATE DEPT OF AGRICULTURE

OKDA0002999

OKLAHOMA DEPARTMENT OF AGRICULTURE
 WATER QUALITY SERVICES
 2800 NORTH LINCOLN BOULEVARD
 OKLAHOMA CITY OK 73105-4298

DF
 12-14-97

POULTRY FEEDING OPERATIONS REGISTRATION APPLICATION

A. Registration Fee \$10 (Ten Dollars) Paid \$10.00 R14831

X Mandatory Registration Renewal

 Re-registration of Expanding Operation (Excess of ten percent of original registered capacity)

 Voluntary Registration

County ADAIR
 (Facility Location)

1. Owner (Requires Completion)

Name C.F. ERNEST DOYLE

Address R#2, BOX 504

City WESTVILLE

State OK. Zip 74965

Phone (918) 723-5679

Ernest Doyle

Rt. 3 Box 1280

Stilwell OK 74960

918-778-3220

Integrator (Must complete if different than owner)

ERNEST DOYLE

#3, BOX 1280

City STILWELL

State OK. Zip 74960

Phone (918) 778-3220

3. Operation (Requires Completion)

Name ERNEST DOYLE

Contact Person

Address

City

State Zip

Phone ()

4. Integrator (Requires Completion)

Name HONEYSUCKLE WHITE

Contact Person TIM ALSUP

Address BOX 225

City SPRINGDALE

State ARK. Zip 72764

Phone (501) 756-4785

Driving directions to operation stated from an identifiable intersection in the nearest town from HWYS. 62 & 59

JCT. of WESTVILLE OK. go 8 mile WEST on HWY. 62, turn left
on blacktop road, go 1 mile turn right on blacktop road, go 1 mile
farm is on left.

OKDA0003000

5. Description of Operation

Number of houses 4Total capacity of houses 41,000

Type of Animals

No. of Animals

☐ Layers☐ Broilers☒ Other
Specify TURKEYS41,000

B. THE FOLLOWING INFORMATION MUST ACCOMPANY THE POULTRY FEEDING OPERATION REGISTRATION APPLICATION. (Contact your local NRCS office for assistance).

1. A ~~diagram~~ map and legal description showing geographical location of the facility on which the perimeters of the facility are designated, location of waters of the State including but not limited to drainage from the facility, poultry waste storage facilities and land application sites owned or leased by the applicant or which the applicant has contracted with for the application of poultry waste.
2. A copy of the Animal Waste Management Plan or Proof of application for such plan, Best Management Practices, Carcass Disposal Plan, or any other plans authorized by the State Department of Agriculture.
3. A Statement of Ownership.
 - a. If the applicant is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation.
 - b. If the applicant is a partnership or other legal entity, the name and address of each partner and stockholder with an ownership interest of 10% (ten percent) or more.

c. Indicate if not applicable

Be advised that the information contained in the statement of ownership shall be public information and shall be available upon request from the State Board of Agriculture.

4. Environmental History, Records, and Awards

- a. An environmental history from the past three years of any poultry feeding operation established and operated by the applicant or any other operation with common ownership in this state or any other state. Such environmental history shall include but not limited to all citations, administrative orders or penalties, civil injunctions or other civil actions, criminal actions, past, current and ongoing, taken by any person, agency, or court relating to noncompliance with any environmental law, rules, agency, order, or court action relating to the operation of a poultry feeding operation.
- b. A copy of all records relating to the environmental history of the poultry feeding operation.
- c. Environmental awards or citations received or pollution prevention or voluntary remediation efforts undertaken by the applicant.

NA

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OATH (as required by Senate Bill 1170-Section 5 B).

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision by qualified personnel who properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons directly responsible for gathering the data, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for knowingly submitting false, inaccurate or incomplete information including the possibility of a fine of not more than ten thousand dollars for each violation."

If the poultry feeding operation is owned by a corporation, the principal executive officer is required to sign the application. For all other legal entities, the contract grower is required to sign the application.

Name ERNEST DOYLE Title OWNER-CONTRACT GROWER

Signature Ernest Doyle Date Signed 12-4-98

State of OKLA. County of ADAIR

Subscribed and sworn before me 12-04, 1998

My commission expires 11-03-2003, 19

Signature of Notary Public Donald Key L

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CONSERVATION PLAN MAP

Owner Ernest C. F. Doyle Operator Saine
 County Adair County Oklahoma, Date 12/83
 Approximate acres 160 Approximate scale 8" = 1 Mile
 Cooperating with Adair County Conservation District

Plan identification 1628 Photo number _____

Assisted by USDA Soil Conservation Service

Sec. 19, 30 - T17N - R22E

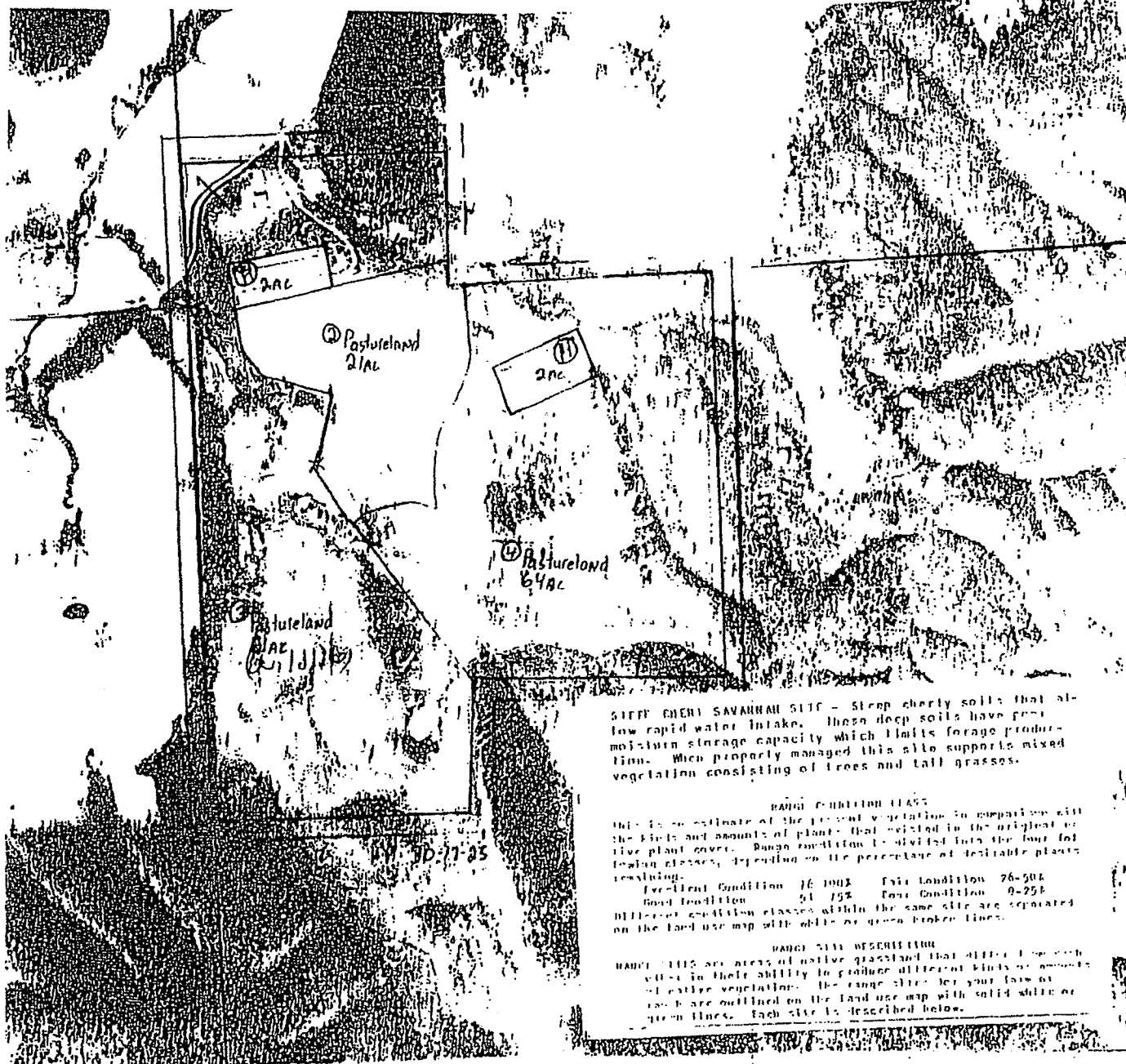


Roads
 Fenced Road
 Property Boundary
 Existing Fence
 Planned Fence

MAP SYMBOLS

Uniform Field Boundary
 Field Number
 Unimproved
 Pond
 Small Reserve

Well
 Windmill
 Vegetative Waterway
 Special Treatment Area
 Inclusion Tie



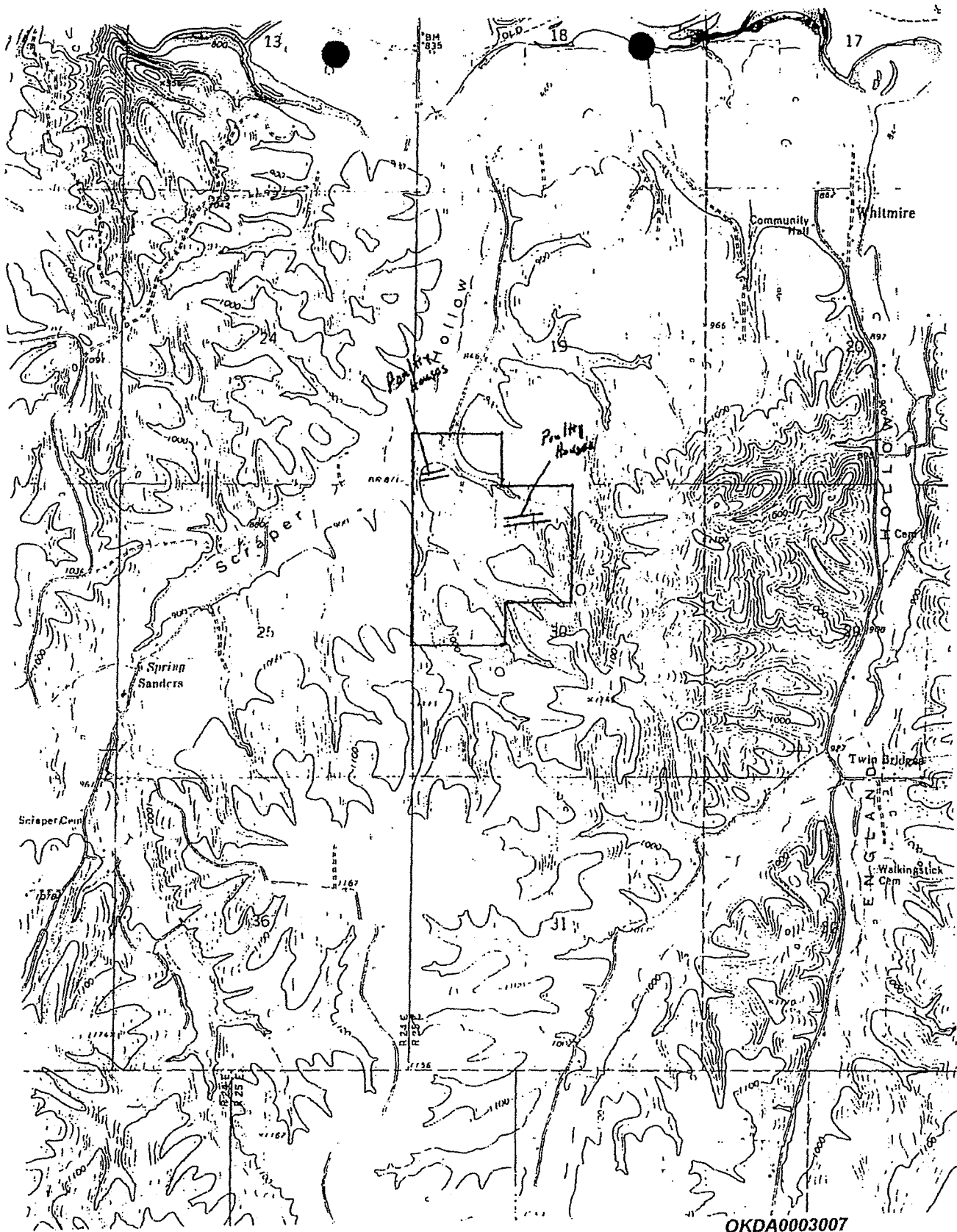
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OKDA0003008

11-14-1998

TO WHOM IT MAY CONCERN:

Our poultry operation is a
partnership:

C. E. DOYLE	50 %
ERNEST DOYLE	50 %

C. E. Doyle
Ernest Doyle

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520

**POULTRY FEEDING OPERATIONS REGISTRATION APPLICATION
CHECKLIST**

OWNER'S NAME: C.F. Boyle

APPLICATION EXAMINED BY: DP

DATE EXAMINED: 12-14-98

**PLEASE INDICATE IF THE OWNER HAS PROVIDED THE
FOLLOWING INFORMATION:**

1. Registration fee paid ☒ YES () NO 3451
2. Type of registration ☒ YES () NO
3. Owner information ☒ YES () NO
4. If necessary, operator information ☒ YES () NO
5. Operation information ☒ YES () NO
6. Integrator information ☒ YES () NO
7. Adequate driving directions ☒ YES () NO
8. Description of operation ☒ YES () NO 4,000 turkeys
9. Diagram or Map ☒ YES () NO
10. Legal Description ☒ YES () NO 19 + 30, 17N 25E
11. AWMP or proof of application for such plan ☒ YES () NO
12. Best Management Practices ☒ YES () NO
13. Carcass Disposal Plan ☒ YES () NO
14. Any other plans authorized by ODA () YES () NO (c) N/A
15. Statement of ownership ☒ YES () NO

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16. Environmental History, Records, and Awards ☒ YES () NO

17. Notarized, Signed Oath ☒ YES () NO

Checklist created on 7/1/98 (references SB 1170 and emergency rules passed on 6/30/98).

OKDA0003012